EXHIBIT 4

Parent Closing
Statement

I. INTRODUCTION AND PROCEDURAL HISTORY

George Willoughby is presently 16 years of age and a 10th Grade student in the Susquenita School District. It is undisputed that he is an eligible student to receive special education and related services. George is identified as having a learning disability in the areas of reading, math and written expression and more recently, identified as a student with speech/language impairment in both expressive and receptive speech. George currently attends the high school for a half day and then travels to the vocational-technical school for a program in auto mechanics for the remaining half of the school day.

George's parents, Agnes and Robert Peiffer, filed a request for a due process hearing on June 25, 2007. [P-1]. The Parents' allege, *inter alia*, that the District did not provide their son with FAPE, ESY, and failed to properly identify him as a student with on-going speech/language impairments. The Parents contend that the Standard Math and English classes that the District requires George to take in order to obtain "proficient" results on the PSSA tests are inappropriate as these classes do not provide George with the appropriate program and placement to address his unique areas of exceptionality. They also lay a claim for a Section 504 violation for the district's denial of access to an appropriate program for George.

The Parents' Complaint alleges that the period of the denial of FAPE extends to the entire time period that George was enrolled in the district. On March 2, 2010, the first day of the hearing, the Hearing Officer allowed testimony on whether any of the exceptions to the 2-year statute of limitations would apply. Subsequently, this claim was denied and the Parents claims were limited to the time period beginning June 25, 2007. [N.T. 181-183]. The Hearing Officer did allow the admission of the 2005 ER as this was the foundational evaluation that gave rise to IEP's in the following years. [N.T. 183]. Additionally, the Hearing Officer indicated that he would not exclude any evaluations. [N.T. 184].

II. ISSUES

1. Whether George has been denied FAPE, ESY, and appropriate speech/language services for the time period beginning June 25, 2007, through and including the close of this hearing?

2. Whether George has been discriminated pursuant to Section 504 against by the Susquenita School District by being denied access to an appropriate education from June 25, 2007 to present?

III. FACTS

The Parents complained that George's educational career at Susquenita has been and continues to be a frustrating experience. Most recently, in the 9th Grade, the Parents became deeply concerned when the

District removed George from appropriate classes in Computer Applications[1] and Resource Room in order to fulfill the District's obligation to the Commonwealth to reach "adequate yearly progress" (AYP). The record is clear that placing students in Standards Math and English classes is a common practice. The District argues that these classes are appropriate and should have placed George in these classes sooner. Contrarily, the Parents assert that removing George from classes that he had waited and planned to take in high school is inappropriate and further, that the Standards classes are not appropriate and deny George FAPE in the LRE. Being required to take the Standards classes, George is in a sense being "punished". While George was allowed to participate in football during the Fall, he was required to 'make-up' the Standard classes he missed by having to do so after school and in the summer. He is also required to fulfill graduation requirements and this results in George having to enroll in 2 English classes and 2 Math classes each year, eliminating the option for George to take certain elective classes that would give him a well-rounded education. In 10th Grade, George's "mandate" to strictly adhere to the Standards English coursework was excused and appropriately replaced with the Wilson program.

[1] The Computer Applications class was scheduled in order to assist George with his disability in written expression. Testimony supports that George was provided with a computer in school for this purpose. George, however, has not become proficient in typing and does not use the 'home row' – this was supposed to be addressed in the Computer Applications class.

During the course of the years in dispute at this hearing, the Parents raise concerns that George was consistently denied ESY services based only on the 'word' of the IEP team that George did not regress during breaks and he was able to quickly recoup skills. No data is presented over the 2 ½ years to support any specific ESY data collection efforts. Rather, the record and evidence affirms that the denial of ESY was merely a standard practice each time George's IEP team met.

George received Speech/Language services for articulation. He was subsequently discharged from Speech services in October 2007 without a re-evaluation to determine if there were other areas of Speech that might be indicative of on-going services. It was not until Dr. Grisolano performed a neuro-psychological evaluation of George in 2009 that detected a possible speech/language issue for receptive and expressive speech impairments. An independent speech/language evaluation performed by Gayle Goepfert confirmed that George's expressive and receptive speech is significantly impaired. Simultaneously, the District performed a Speech evaluation which confirms the results that the Geopfert evaluation yielded. The difference is that the District's evaluator, Becky Blazi, appears to use 1.5 to 2.0 standard deviations below the norm before Speech should be initiated and even using the 1.5 to 2.0 SD below the norm, considers George to have speech issues of only moderate impairment – customized to "mild" impairment for the District's benefit at the hearing.

The Parent's expert, Andrew Klein, opined that George does not receive FAPE at Susquenita. [P-2]. Klein cites to the inadequacies of the 2005 ER, to every IEP subsequent to that ER, to the denial of ESY services each year, to the failure of the District to address George's known disabilities year after year in Math and Reading comprehension, to the requirement of the Standards Math and English classes that fail to remediate the areas of George's disabilities.

George attends a half day at the Vo-Tech school. In this hearing, we learned from the Principal of the Building that George's IEP is not being followed strictly because vo-tech staff complained that the 'checklist' is too "cumbersome" to implement. [NT 781-796]. The District's Director of Special Education, Holly Sawyer, admitted as much her knowledge that not only was the IEP was not being implemented at vo-tech, she admitted that the District was not monitoring George's progress at vo-tech. [NT 1182, 1185]. In effect, the "checklist" was the manner in which the District was to address George's ADHD, even though no district personnel accept the ADHD diagnosis, but the purpose of the checklist is to keep George on task, focused and organized – all characteristics of ADHD.

IV. DISCUSSION AND CONCLUSIONS OF LAW

Burden of Proof.

The U.S. Supreme Court in Schaffer v. Weast, 126 S. Ct. 528, 537 (2005) held that in an administrative hearing, the burden of persuasion as an element of the burden of proof, under the IDEA is properly placed upon the party seeking relief. The party bearing the burden of persuasion must prove its case by a preponderance of the evidence. This burden remains on that party throughout the case. However, the application of the burden of persuasion does not enter into play unless the evidence is in equipoise – equally balanced – so that by definition the party seeking relief has not presented a preponderance of the evidence. Here, the Parents' assert that the evidence is not in equipoise and at all time and through all witnesses, the Parents' prevailed in their claims by a preponderance of the evidence.

FAPE

A student's special education program must be reasonably calculated to enable the child to receive meaningful educational benefit at the time the IEP was developed. Board of Education v. Rowley, 458 U.S. 176 (1982); Rose by Rose v. Chester County Intermediate Unit, 24 IDELR 61 (E.D. Pa. 1996). Districts need not provide the optimal level of service, maximize a child's opportunity, or even offer a level that would confer additional benefits, since the IEP as required by the IDEA represents only a basic floor opportunity. Carlisle Area School District v. Scott P., 62 F.3d 520, 523, 533-34 (3d Cir. 1995).

Compensatory Education.

It is well settled that compensatory education is an appropriate remedy where a school district knows, or should know, that a child's educational program is not appropriate or that he or she is receiving only trivial educational benefit, and the district fails to remedy the problem. M.C. v. Central Regional School District, 81 F. 3d 389 (3d Cir. 1996). Such an award compensates the child for the period of time of deprivation of special education services, excluding the time reasonably required for a school district to correct the deficiency. Compensatory education is an equitable remedy. Lester H. v. Gilhool, 916 F.2d 865 (3d Cir. 1990). To assure that an eligible student receives FAPE, and IEP must be "reasonably calculated to yield meaningful educational or early intervention benefit and student or child progress. Rowley, 358 U.S. 176 (1982). "Meaningful benefit" means that a student's program affords the student the opportunity for "significant learning". Ridgewood et al. v. N.E., 172 F.3d 238 (3d Cir. 1999). De minimis or minimal educational progress is not acceptable. M.C. v. Central Regional School District, 81 F.3d 389 (3d Cir. 1996). Moreover, a student's IEP must include specially designed instruction tailored to meet the unique needs of the student and must be accompanied by any necessary related services to permit the child to benefit from the instruction. Oberti v. Board of Edu., 995 F.2d 1204 (3d Cir. 1993). Specially designed instruction and related services must be delivered in the LRE that is appropriate for the child, and the school district must make efforts to ensure that it is implementing an IEP in the LRE. Id.

The record in its entirety in this case supports the conclusion that the District failed to offer a program and placement that are reasonably calculated for George to yield meaningful educational benefits. [N.T. 312-316]. The most effective measure of determining whether a student has made meaningful progress and is receiving educational benefit is through the use of pre and post testing. This is noticeably absent in the District's evaluations of George. For instance, in 2005, the District's RR amounts to nothing more than a cursory paper review. In 2008, the District pursued to have the Parents waive the triennial evaluation. Therefore, how can it objectively be determined whether George progressed, regressed or stagnated? It cannot without proper data collection. The only 'significant' year by year testing conducted by the District was the re-administration of the GORT for 3 consecutive years. Ironically, the District reports the GORT in age equivalent scores. Equally interesting is the District's Counsel quizzing Mr. Klein regarding the use of grade equivalents: "[g]rade equivalents make facile[2] comparisons, would you agree?" [NT 336]. To which Mr. Klein responded: "[w]orse than facile." [NT 336]. Yet, for 3 years, the District

[2] By definition, facile is defined as "done or achieved with little effort or difficulty; easy; arrived at without due care, effort or examination; superficial; readily manifested, together with an aura of insincerity and lack of depth." Source: The OnLine Dictionary.

reported George's scores on the GORT in grade equivalents when the GORT does permit scores to be reported in terms of standard scores.

Mr. Klein's testimony was replete with his expert opinion that the District failed to provide George with FAPE throughout the school years. Mrs. Peiffer's testimony provided more of the same examples of problems that permeated George's program. The RR's and IEP were, in the opinion of the Parents' expert, all deemed to be inappropriate, insufficient and inadequate. Math and Reading Comprehension disabilities, which identified through testing, have never been addressed. [NT 415]. The lack of attention to George's needs for speech/language intervention is inexcusable. [NT 411-412, 418]. Mr. Klein points to the repeated denial of ESY services based on no evidence as one of the areas which the District failed to provide George with FAPE. The requirement of forced-participation in the Standards classes is yet another example of the denial of FAPE. On one hand, the District admits that students are placed in Standards classes so they can achieve proficient or advanced scores on the PSSA tests. [NT 1177]. Along those same lines, if a student scores proficient or advanced, these scores aid the District in achieving AYP. Id. Specifically, Ms. Sawyer testified that "putting students into those classes does not deny them FAPE. We make sure that specially-designed instruction and the instruction that they are receiving are appropriate for their instructional level." [NT 1178]. Contrast this statement with the testimony of the Standards' instructors who admitted that chapters are followed. When asked whether George had a 1:1 aid in Standards, the response was in the negative, yet this is one of George's IEP goals to monitor the checklist before and after class. This is not being done in the Standards classes. Other than using the right words in response to the question whether Standards classes offer FAPE, Ms. Sawyer offers no specific examples how George's IEP is being implemented in these classes.

The best summary by the District of their misperceptions of George stems "from the top" during the testimony of Dr. Sheats, Superintendent:

> Q: So what about his level of impairment?
> A: His level of impairment – I know George, could pick George out of a group of students. I have not worked directly with George, but I can tell you that had I not known this student, I would not have seen George in a social situation or in a group instruction and been able to tell that he was an exceptional student.
>
> Q: Why is that?
> A: Well, he interacts appropriately. Although I know that he has processing issues, I don't see extensive stoppages in his speech pattern. I know that he's been involved basically on grade level classes, in the area particularly of mathematics. It appears to me, based on everything that I've seen, the reading issues seem to be more problematic than what the mathematics issues are.

[N.T. 1245]. Witness after witness for the District touted this same mantra. It is very disconcerting that the District denies the validity of the evaluations performed by Dr. Grisolano and Dr. Krecko regarding issues pertaining to a diagnosis of ADHD (inattentive), anxiety and depression. [NT 413]. In order words, if George "looks" attentive in class, is well-behaved, socially appropriate with his peers and teachers, gets passing grades, one way or the other, this is enough to satisfy the District that George is no different than other students attending Susquenita and that all his needs can be met through the general curriculum.

George has 2 more years remaining. Without specific guidance and direction from a "higher authority", the Parents fear that the time left for George will be more of the same.

V. CONCLUSION

In this instance, the Parents' seek an award of compensatory education for the denial of FAPE, including the consistent denial of ESY services, beginning June 25, 2007, up to and including the conclusion of the hearing. That includes the 2007/2008, 2008/2009 and the 2009/2010 school years. The Parents request that the compensatory education award be made day for day and hour for hour, with the exception of the 2009/2010 school year, wherein George receives an appropriate vocational technical program for half the school day.[3]

The Parents also seek a finding of a violation of Section 504 of the Rehabilitation Act for the district's failure to provide George with access to FAPE.

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[3] The caveat being is that the Principal of the vo-tech program admitted that the vo-tech is not following critical portions of George's IEP. This failure, which the District was aware of, should be assessed against the district for lack of follow-up on George's IEP implementation on those aspects that should be followed while George attends vo-tech.

Finally, since the District cannot or will not develop an appropriate program for George, the Hearing Officer should order the district to provide George with appropriate goals and measurable objectives proscribed by the Hearing Officer as part of his decision which are calculated to address George's specific needs. This should include an order that orders the District to ensure that George, if required to take Standards Math and English classes that those classes appropriately and individually address his needs identified by Dr. Grisolano's evaluation and the district's evaluation to include goals for reading comprehension and his disability in Math. The computerized Standards classes should not be allowed as the sole means by which George receives remediation in his targeted areas of disability.

The Hearing Officer's order of compensatory education should also be made very explicit clear that the use of any compensatory education is at the sole discretion of the Parents, and further, detail the amount of hours of compensatory education so that this matter is resolved without any continuing disagreement as to number of hours and costs pertaining to any potential compensatory education award.

Respectfully submitted,

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